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Supreme Court, U.S.
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No. 08-1123

In the Supreme Court of the United States

CHEVRONTEXACO CORPORATION and
TEXACO PETROLEUM COMPANY,
Petitioners,

v.

REPUBLIC OF ECUADOR and PETROECUADOR,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Whether the doctrines of (a) contract-by-estoppel or (b) implied assumption of contract obligations can bind a public agency of a foreign sovereign to the terms of an otherwise illegal public contract where, among other things: (1) the public agency never executed the contract; (2) the parties never sought the statutorily-required approvals necessary for its execution; (3) the contract contained provisions expressly prohibited by the foreign sovereign's constitution and laws; and (4) no party "reasonably relied" on the contract as being legally binding?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, respondents state as follows:

The Republic of Ecuador and PetroEcuador are a sovereign government and an agency of the sovereign, respectively.

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INTRODUCTION

Putting aside the fact that a summary affirmance cannot by its nature create a true circuit conflict, petitioners' request for review rests upon a fundamental mischaracterization of the decision below. Contrary to petitioners' repeated suggestion, the district court did not decide the general question of when a sovereign government can become bound by a contract that it did not sign, much less decide that question in a way that conflicts with the Federal Circuit's decision in *Hardie v. United States*. Instead, the district court addressed only the use of estoppel against a *foreign government entity*, necessarily applying applicable *foreign* law governing the formation of public contracts. That issue is vastly different from that in *Hardie*, which addressed estoppel against the United States government under our *domestic* contract law.

But even if the general question presented in the petition were actually presented by this case—which it is not—this factually complicated case would be a poor vehicle with which to address that question. Indeed, petitioners do not even challenge the district court's well-documented findings, grounded in petitioners' own contemporaneous internal documents, that their management believed that PetroEcuador was *not* bound by the contract in question. Given these findings, petitioners cannot possibly show "reasonable reliance" sufficient to bind PetroEcuador to a contract which had never been presented to it for signature, much less authorized and executed by it in the manner legally required of an Ecuadorian public contract. And, in any event, the decision under review is an interlocutory ruling

that leaves petitioners with plenty of opportunities to resist the massive liabilities they fear.

STATEMENT

A proper understanding of the district court's decision requires some familiarity with the history of the underlying dispute. That history plainly shows that respondent PetroEcuador, a government agency created to participate in domestic hydrocarbon exploitation, never became a party to the 1965 Joint Operating Agreement ("1965 JOA") on which petitioners have built their case.[1] More importantly, the record shows that petitioners could not have thought, and (as their own documents show) did not in fact believe, that PetroEcuador was bound by the 1965 JOA.

The 1964 Concession and the 1965 JOA. In 1964, the Republic of Ecuador ("the Republic") entered into an oil concession agreement with Texaco[2] and Gulf, Inc. (the "1964 Concession") for the exploration and exploitation of hydrocarbons in the Oriente [Eastern] region of Ecuador. This 1964 Concession was subsequently registered in the government's Office of Hydrocarbons. A-921.[3] As required by the government's Supreme Decree authorizing the 1964 Concession, that concession

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[1] Actually, the Republic created PetroEcuador's predecessor, "CEPE," which for convenience will be referred to as PetroEcuador.

[2] For purposes of this Opposition, it is not necessary to distinguish between petitioners' parent and subsidiary companies, all of which will be referred to herein as "Texaco."

[3] A-__ refers to the Joint Appendix filed in the Court of Appeals.

provided that all disputes between the Republic, Texaco or Gulf with respect to the 1964 Concession would be resolved in *Ecuadorian* courts under Ecuadorian law. A-881 ¶42.

The next year, Texaco and Gulf executed the 1965 JOA in Florida to govern their joint exploitation of the 1964 Concession. Pet. App. 6a. The 1965 JOA contained (a) an arbitration clause requiring Texaco and Gulf to submit disputes between them to the AAA in New York; (b) a clause providing that the two private concessionaires would indemnify the Operator (Texaco) from all third-party claims that might be made against it; and (c) a choice-of-law clause stating that the agreement would be governed by the laws of New York, except for those matters "necessarily governed by the laws of the Republic of Ecuador." Pet. App. 40a-41a.

The 1965 JOA was not recorded in the Republic's Hydrocarbons Registry, as it was a private agreement negotiated and executed in the United States by two U.S. companies. Under Ecuadorian law, as of 1971 any hydrocarbon-related agreement that bound either the Republic or an instrumentality of the government had to be recorded with the Hydrocarbons Registry as a condition of its enforceability, A-498 ¶41, A-503 ¶58; A-962, whereas such agreements among purely private parties did not have to be so recorded.

Termination of the 1964 Concession and Execution of the 1973 Concession. In 1971, the Republic created PetroEcuador's predecessor, whose purpose was to own, explore, produce, process, transport and market all hydrocarbon resources within Ecuador. A493 ¶¶21-22. Later

that year, the Republic also enacted a new Hydrocarbons Law which, among other things, set up the Hydrocarbons Registry and prescribed new contracting methods and terms for petroleum concessions. A-493 ¶22 nn.6-7.

In 1973, Texaco and Gulf entered into a new concession contract with the Republic (the "1973 Concession"). A-507 ¶78; A-774-817. The purpose of the 1973 Concession was to terminate and replace the 1964 Concession, in line with the Republic's simultaneous termination of all other prior hydrocarbon concession contracts granted by the Republic to other concessionaires in Ecuador. A-814 ¶53.1; A-969. The 1973 Concession also contained an option for PetroEcuador to acquire up to a 25% participation interest in the 1973 Concession by 1977. A-911 ¶34. The 1973 Concession continued to require the parties to submit any dispute that might arise under it exclusively to the laws and courts of Ecuador. A-812 ¶50.

The next year, the Republic, PetroEcuador, Texaco, and Gulf entered into a purchase agreement, effective as of June 6, 1974 (the "1974 Agreement"). Under that agreement, and for a substantial payment, PetroEcuador acquired equally from Texaco and Gulf a 25% participation in the 1973 Concession, including all investments, operations, costs, obligations, royalties and crude oil sales. A-977-81, A-979-80 ¶¶7, 10.

The 1974 Agreement expressly contemplated the future negotiation and execution of "an Operation Agreement *to be subscribed* by the parties," which would govern all of the hydrocarbon exploration and production activities to be performed by the new consortium. Resp. App. 4 (A-979) ¶8 (emphasis added). The 1974 Agreement did not

reference the 1965 JOA or make any provisions for Operator indemnification or dispute resolution.

Negotiations for a New JOA. Following execution of the 1974 Agreement, and in accordance with its stated terms, Texaco and Gulf both agreed that a new tripartite operating agreement should be signed between themselves and with PetroEcuador that would govern the Texaco-Gulf-PetroEcuador consortium's activities. Resp. App. 6 (A-997). Indeed, Gulf repeatedly advised Texaco that all ancillary agreements based on the 1964 Concession, including the 1965 JOA, had terminated when the 1973 Concession became effective, and therefore that a new legally enforceable joint operating agreement among the three parties was required. Resp. App. 37-40 (A-4774-76) ¶¶9, 12-14. PetroEcuador likewise shared its similar view, in communications to Gulf and Texaco, that the 1974 Agreement required new agreements to "govern the contractual and operational relations of the [PETROECUADOR]-TEXACO-GULF Consortium." Resp. App. 42 (A-4782).[4]

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[4] *See also* A-4656 ("[A] new operational agreement was required ... between the three parties. This was the first time [PetroEcuador] was going to be participating with its own personnel and with the personnel of Texaco and Gulf.... We knew that ... any new agreement or contract had to be subject to the laws and the judges and had to be done with the authorization of our government."); A-4658-59 (after the 1974 Agreement had been signed, the Minister of Energy and Natural Resources advised Texaco that they needed a new operating agreement since the Gulf-Texaco 1965 JOA, not being subject to the laws and courts of Ecuador, was not valid or enforceable); A-4642-43 (the 1965 JOA was nothing but a reference and did not bind PetroEcuador to anything).

To fill this void, almost immediately after signing the 1974 Agreement, Texaco, Gulf and PetroEcuador began negotiating the terms of a three-way joint operating agreement ("JOA"). As a starting point, Texaco sent PetroEcuador a copy of the 1965 JOA and a draft of a new three-way JOA based on the 1965 JOA. A-987. Significantly, neither at this point nor at any time during the parties' relationship did Texaco ask PetroEcuador to sign the 1965 JOA or to commit to its terms. Resp. App. 1-3 (A-960-61), A-965; A-987; A-968; A-999-1000; A-1006; A-1009; A-1010; A-1017-18, A-1019.

Early in the negotiations for a JOA, moreover, PetroEcuador, as an organ of the State, explicitly rejected Texaco's draft provision requiring that disputes be settled through arbitration. Pet. App 8a-9a. Texaco management acknowledged internally that PetroEcuador's rejection of the proposed arbitration provision "was expected," A-1035, ¶ 43, and all subsequent JOA drafts provided that disputes would be settled, as required under the Hydrocarbons Law, pursuant to Ecuadorian laws and procedures. *See, e.g.*, A-1081 ¶15.1; *see also* A-4618 (it would be "unusual" for any national oil company to agree to be bound by foreign law).

Texaco also recognized that, to be executed by and bind PetroEcuador, any JOA would first have to have, among other things, the requisite "[a]pprovals of [the] Solicitor Gen[eral], [the Board] of Dir[ectors] of [PetroEcuador], [the] National Security Council, [the] Joint Command of Armed Forces, [and the] Comptroller General," as well as approval by the Ministry of Natural Resources. A-1022, A-1030; *see also* A-959 ("Every contract entered into by the State generally re-

quires many internal approvals"); A-1011, A-1012 (approval by Ministry of Natural Resources and often Ministry of Finance was normally required before PetroEcuador could become legally bound).

Although multiple drafts were exchanged intermittently over the years, the parties were unable to reach agreement on the terms of a JOA until 1991. Pet. App. 8a. During this period, Texaco continued to act as consortium Operator on an interim or *ad hoc* basis with "the tacit agreement of [PetroEcuador] and Gulf," because "an operating agreement between the consortium members ... had not been signed." Resp. App 8 (A-1086); *see also* A-3377. For this reason, Texaco described its current position as the "*de facto* operator" of the consortium. Resp. App. 35 (A-4472).

All three consortium members believed the 1965 JOA did *not* legally bind PetroEcuador—and Gulf believed it no longer even bound Gulf and Texaco *inter se*. For example, throughout 1975 and 1976, Gulf sent Texaco numerous letters stating that the 1965 JOA had been terminated, and that "existing operations ... are being handled on a *de facto* basis until such time as the new operating agreements are finalized." Resp. App. 38 (A-4774) ¶10; Resp. App. 9-10 (A-1092); A-4777-81; A-1093-95. Texaco thereafter advised its outside auditor that "Gulf considers Napo Joint Operating Agreement [the 1965 JOA] terminated August 1973 and Napo Accounting Procedures are used merely for quote interim guidance unquote." Resp. App. 15 (A-1111). Moreover, in their joint telex to their respective supervisory offices in the United States, the local general managers for *both* Texaco's and Gulf's Ecuadorian operations complained that, in the absence of a "an operating

agreement regulating joint operating activities[,] ... we have been operating on an *ad hoc* basis whereby [PetroEcuador] is free to place whatever interpretation it likes on the [1974 Agreement]." Resp. App. 11 (A-1096). For its part, Texaco acknowledged that the 1965 JOA had never been "formally adopted by [PetroEcuador]"; that during the pendency of the negotiations, the consortium was "working under a *de facto* [operating company] arrangement"; and that "[u]ntil an agreement on new operating procedures can be reached, [Texaco] shall continue to apply its own internal rules concerning management, administration, and the approval of outlays in all phases of the joint operations." Resp. App. 26 (A-1388); Resp. App. 28 (A-1391); Resp. App. 21 (A-1344).

Further evidencing all parties' contemporaneous understanding that PetroEcuador was not bound by the 1965 JOA, the Operator's monthly "cash call" letters sent by Texaco to PetroEcuador neither cited to nor even mentioned the 1965 JOA or that document's "cash call" procedures. *See, e.g.*, A-3202; A-1102. Indeed, in Texaco's initial letter to PetroEcuador explaining the "cash call" procedures, Texaco not only failed to advise PetroEcuador that its "cash call" obligations were governed by the 1965 JOA (as it advised Gulf), but specifically advised PetroEcuador that only the signatory "parties" to that document were subject to the 1965 JOA's penalty provisions for tardy payment—*specifying Texaco and Gulf as the only two "parties" to the 1965 JOA*. Resp. App. 13 (A-1098).

Texaco's consistent failure to mention the 1965 JOA in its monthly "cash call" letters to PetroEcuador is especially significant because, in contrast,

its simultaneous "cash call" letters sent to Gulf expressly invoked the cash call provisions of the 1965 JOA. A-1104-10. Gulf, however, replied by letter that the 1965 JOA was no longer effective *even between Gulf and Texaco.*

As did Texaco and Gulf, PetroEcuador complained about problems stemming from the absence of a binding three-way JOA. PetroEcuador viewed the 1965 JOA as a merely "referential" document that could be used on an *ad hoc* basis for informal guidance in the absence of a binding agreement. Resp. App. 17 (A-1112) (citing "the lack of an adequate legal instrument governing the relations of the co-owners and regulating the procedures of such operation *since ... [the 1965 JOA] ... [was] only [a] referential document for the solution of controversies that may arise.*") (emphasis added).

On May 27, 1977, PetroEcuador purchased Gulf's remaining 37.5% share of the 1973 Concession through a purchase agreement duly registered in the Hydrocarbons Registry (the "1977 Gulf Agreement"). The 1977 Gulf Agreement provided that PetroEcuador would assume only those obligations referred to in that agreement, and cautioned that neither PetroEcuador nor the Republic was thereby assuming any obligation that Gulf may have had to third parties not expressly listed in its financial statements as a disclosed liability. A-1317 §2.13; A-1340. This agreement did not contain any provision requiring PetroEcuador to assume the 1965 JOA or any obligation that Gulf owed to Texaco thereunder. In fact, the 1977 Gulf Agreement referred solely to the 1973 Concession as the contractual basis for the relationship between the three concession-

aires. A-1312. Consistent with its earlier-stated position, Gulf did not mention the 1965 JOA in the 1977 Agreement. A-1312-20.

Because there was still no legally enforceable operating agreement to govern the PetroEcuador-Texaco relationship, Texaco advised PetroEcuador that, until an operating agreement could be signed, operations would continue to proceed informally through consensus and Texaco's "internal rules," Resp. App. 21 (A-1344), which were essentially its operating, financial and administrative manuals codified from standard oilfield practices.

The Change-of-Operator Agreement and Expiration of the 1973 Concession. In a 1985 Change-of-Operator Agreement, "[t]he parties ... reaffirm[ed] PetroEcuador's right as majority partner to take over the Consortium's operations," but also stipulated that Texaco would continue as Operator until PetroEcuador concluded it was ready to take over that role. Resp. App. 24 (A-1361-62) ¶¶2.1, 3.3. In addition, PetroEcuador agreed to give Texaco one year's advance notice of its intent to take over operation of the consortium. A-1363 ¶3.3.5.

For purposes of Texaco's interim service as Operator of the consortium, and in recognition of the fact that after almost ten years Texaco and PetroEcuador still did not have a binding JOA, the 1985 Agreement provided that "[t]he parties shall within 30 days commence negotiations for a final Joint Operations Agreement to continue the Consortium's operations," and that "[u]ntil the Joint Operations Agreement becomes effective, the Consortium's operations shall be carried out according to *the standards and procedures that have been in force up to now*." Resp. App. 24 (A-1362) ¶¶3.3.1,

3.3.2 (emphasis added). The omission of any reference to interim operations being carried out *under the 1965 JOA* is telling. Had Texaco truly believed the 1965 JOA was still in force, it would never have made alternative reference to unidentified "standards and procedures."

Although the 1985 Agreement provided that negotiations for a JOA were to commence within 30 days, no consensus on the terms of a JOA was reached until 1990. Throughout the intervening period, PetroEcuador continued to note that there was no binding legal authority governing the operations of the consortium. Thus, the PetroEcuador Audit Report for 1984, a copy of which was provided to Texaco at the time, stated that "there is no Joint Operating Agreement between PetroEcuador and Texaco which has been declared to be valid and effective by the parties." Resp. App. 29 (A-1393). Similarly, the 1985 Audit Report, a copy of which was provided to the officers of the consortium on March 12, 1987, A-1165, A-1400, stated that "there is no legal basis to contractually relate [PetroEcuador] and TEXACO in respect to the joint operations in the Consortium." Resp. App. 19 (A-1173). The auditors recommended that the Minister of Energy and Mines "prepare the analysis and to decide ... the contractual relations that are necessary to be established between [PetroEcuador] and TEXACO."[5] *Id.*

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[5] Although, as noted by petitioners, the 1985 Audit Report listed the 1965 JOA as one of the documents that "governed" the "activities conducted by Texaco as Operator of the Consortium," Petition, p. 5, the same PetroEcuador auditor who had prepared the 1985 report deleted that language in the 1986 Report, apparently having become more familiar with the consortium's operations during the intervening year. A-

Likewise, PetroEcuador's 1986 Audit Report, a copy of which was provided to officers of the consortium in or about December 1987, A-1570, specifically stated that "*[d]ocuments such as the 'Napo Agreement' [1965 JOA] ... have remained up to date as referential instruments for the solution of difference[s] that may arise ... although the first has no legal argument to be binding upon*" PetroEcuador. Resp. App. 30-31 (A-1405) (emphasis added). This report additionally stated that "*there is no Agreement of Operation of [PetroEcuador] and Texaco*" and again recommended that such an agreement be negotiated. Resp. App. 31 (A-1406) (emphasis added).

On September 21, 1988, PetroEcuador provided written notice to Texaco that it would assume the role of Operator on July 1, 1990. A-1573. In preparation for that change, on June 30, 1990, PetroEcuador and Texaco entered into a new Change-of-Operator Agreement, which the parties expressly agreed was based only on the terms of the 1985 Agreement and PetroEcuador's September 21, 1988 notice. Although the Change-of-Operator Agreement purported to recite all its contractual antecedents, it contained no reference to the 1965 JOA. A-1373 ¶¶1.1-1.2; *see also* A-4596. Also, the "Jurisdiction" section of the Change-of-Operator Agreement provided that controversies between the parties arising from the Agreement "shall be brought before the [Ecuadorian] Special [Hydrocarbons] Court, in conformance

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1403-04. Of course, the word "governed" is also consistent with the 1965 JOA's use as a reference point for making *ad hoc* operational decisions.

with the Hydrocarbons Law and the regulations pertinent to the case." A-1378.

Pursuant to the Change-of-Operator Agreement, PetroEcuador assumed the role of Operator of the consortium in July 1990. On March 25, 1991, PetroEcuador and Texaco finally entered into a joint operating agreement (the "1991 JOA"), which was—as all JOA's to which PetroEcuador was a party had to be—duly recorded in the Hydrocarbons Registry on July 11, 1991. A-1580-602; Pet. App. 24a.

In June 1992, the 1973 Concession expired, and Texaco's interest in the consortium reverted to the Republic and PetroEcuador. A-916 ¶49.

The *Aguinda* Litigation. In November 1993, a group of residents of Ecuador's rain forest in the vicinity of the concession's operations filed a class action suit against Texaco in the United States District Court for the Southern District of New York, captioned *Aguinda v. Texaco, Inc. ("Aguinda").* The *Aguinda* plaintiffs "alleged that between 1964 and 1992, Texaco's oil operation activities polluted the rain forests and rivers in Ecuador." *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 473 (2d Cir. 2002). The *Aguinda* plaintiffs sought money damages as well as "extensive equitable relief to redress contamination of the water supplies and environment." *Id.* at 473-74.

From 1993-2002, Texaco sought dismissal of the case in favor of an Ecuadorian forum. In 2002, the Second Circuit affirmed the district court's dismissal, principally on grounds of international comity and *forum non conveniens*, but with the understanding that the case would be re-filed and litigated in an Ecuadorian court. *Id.* at 476-78.

The 1994 MOU, 1995 Settlement Agreement, and 1998 Release. Late in 1994, the Republic, PetroEcuador and Texaco entered into a Memorandum of Understanding (the "1994 MOU") for Texaco's remediation of certain areas where it had operated the concession. The 1994 MOU was executed to settle any outstanding environmental remediation claims that the Republic or PetroEcuador (but not third parties) might have had against Texaco. Indeed, the 1994 MOU expressly provided that "[t]he provisions of this Memorandum of Understanding shall apply without prejudice to the rights possibly held *by third parties* for the impact caused as a consequence of the operations of the former PETROECUADOR-TEXACO Consortium." Resp. App. 34 (A-1730) §VIII (emphasis added).

The next year, the Republic, PetroEcuador, and Texaco replaced the 1994 MOU with a more definitive agreement (the "1995 Settlement Agreement") to settle environmental damage claims that the Republic or PetroEcuador might have against Texaco arising from Texaco's role as consortium Operator. Pet. App. 10a.

Pursuant to the 1995 Settlement Agreement and a 1996 Remedial Action Plan adopted pursuant thereto (the "RAP"), Texaco and its contractors conducted certain remediation of the affected areas. The Republic, PetroEcuador and Texaco then executed a "Final Acta" (the "1998 Release"), releasing any contractual claims that the Republic and PetroEcuador might have had against Texaco for failure to perform its obligations under the 1995 Settlement Agreement. Pet. App. 10a. Being limited to the release of Texaco's contractual obligations to perform the RAP—

obligations owed exclusively to the Republic and PetroEcuador—the 1998 Release did not have to carve out third-party claims against Texaco.

The *Lago Agrio* Action. In 2003, virtually all the *Aguinda* plaintiffs re-filed their claims against Texaco in the Superior Court of Lago Agrio, Ecuador (the "*Lago Agrio*" action). As in *Aguinda*, the plaintiffs sought monetary damages as well as injunctive relief requiring Texaco to remove any polluting elements still in the region and to remediate the environmental damage allegedly caused by its years of negligence as Operator of the consortium. A-1805-31.[6]

The District Court's Order Granting A Permanent Stay of Arbitration. On June 19, 2007, after extensive briefing on the summary judgment motions, including supplemental submissions on Ecuadorian law and a four-day evidentiary hearing featuring expert testimony on Ecuadorian law held pursuant to Federal Rule of Civil Procedure 44.1, the district court issued the decision at issue here. That decision (1) granted respondents' re-

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[6] Although irrelevant to their petition, petitioners quote, out of context, an e-mail from Ecuador's Assistant Attorney General, which was copied to certain representatives of the *Lago Agrio* plaintiffs, and a March 2007 statement by the current president of Ecuador stating his support, in principle, for the *Lago Agrio* plaintiffs. Petition, p. 7. In fact, the e-mail concerned an unsuccessful effort by Texaco to have the then-Attorney General of Ecuador intervene in the *Lago Agrio* action on behalf of Texaco. A-4262; A-4691; A-4825-26. Both the then-Attorney General and subsequent Attorney Generals have declined to intervene in the *Lago Agrio* litigation on behalf of either party. And while the President of Ecuador has expressed support for the indigenous communities, he has not interfered with the legal process.

quest for a permanent injunction of the arbitration in New York that was initiated by petitioners (purportedly under the 1965 JOA), and (2) denied petitioners' motion for summary judgment on the permanent injunction. The court held "that an Ecuadorian court looking at the arbitration provision in the 1965 JOA would find it not binding upon PetroEcuador," and that "even in Chevron's [Texaco's] best case scenario, it still cannot show that under Ecuadorian law PetroEcuador would have the [1965] JOA enforced against it because there would be a lack of any reasonable expectation by Chevron that the [1965] JOA had continuing validity." Pet. App. 17a, 19a.

Additionally, the district court found that, "[b]ecause the formalities were not complied with, an Ecuadorian court looking back to 1974 would likely rule that the JOA was not binding on PetroEcuador"; that "[e]ven if formalities were not to be required in this instance, there is substantial disagreement amongst the experts as to whether the JOA, even if completely valid procedurally, would be constitutional"; and that "[t]he state of the law of Ecuador in 1974 on arbitral matters would be too unsettled for any reliance to be reasonably maintained." Pet. App. 24a, 28a-29a.

The district court rested its decision on the additional and alternative ground that "[t]he course of conduct of the parties ... becomes irrelevant if the party seeking to estop the government from denying the existence of a contract does not itself believe ... that the contract is binding on the government." Pet. App. 35a. The district court, citing substantial contemporaneous internal Texaco records, found that "[t]hat is the case here." *Id.*

Proceedings in the Court of Appeals. Petitioners appealed the district court's grant of a permanent injunction against arbitration to the United States Court of Appeals for the Second Circuit. In a summary order issued on October 7, 2008, the panel affirmed the district court's order, stating that "[w]e have considered all of Appellants' claims and, for substantially the reasons stated by the district court in its careful and well-reasoned decision, find them to be without merit." Pet. App. 2a. Petitioners' petition for rehearing or rehearing *en banc* was denied by the Court of Appeals on December 8, 2008. *Id.*, 132a-133a.

REASONS FOR DENYING THE PETITION

As the preceding history shows, petitioners could not possibly have had a reasonable expectation that PetroEcuador was bound by the 1965 JOA—which neither the Ecuadorian government nor any of its agencies ever signed or ratified—requiring arbitration in a foreign forum. Indeed, agreement with this provision would have been contrary to binding Ecuadorian law. This case is thus very different from *Hardie*, which involved the liability of the *United States* government pursuant to *United States* law. For that and other reasons explained in Section I below, the broad issue identified in the petition is not really presented under the facts of this case, and is not otherwise worthy of this Court's review. Moreover, as shown in Section II, petitioners have overlooked the interlocutory character of this case, and for that reason have vastly overstated the importance of the decision below. Finally, as shown in Section III, even if the question presented were truly presented here, and were otherwise worthy

of review, this case would be a poor vehicle with which to resolve that question.

I. The decision below did not create a circuit conflict on the question presented.

Petitioners err first in asserting that the Second Circuit's decision established principles of law in the Second Circuit which conflict with those of the Federal Circuit. The decision complained of is a summary affirmance, and thus according to the Second Circuit's Local Rules (32.1(b)), does not have precedential value in the Second Circuit. In any event, petitioners' articulation of the ruling below is much broader than the ruling itself. Finally, the decision below cannot conflict with the Federal Circuit's decision in *Hardie* because the latter considered estoppel only against the United States, whereas here the district and Circuit Courts considered estoppel against only the Republic, a *foreign* sovereign.

A. Even after summary affirmance, the district court's decision is not "Second Circuit law."

Local Rule 32.1 of the Second Circuit states that "Rulings by summary order do not have precedential effect." Instead of establishing precedent, summary orders are "abbreviated, and may omit material required to convey a complete accurate understanding of the disposition and/or the principles of law upon which it rests," and thus are only intended to provide "guidance and information" to the parties in cases where "each judge of the panel believes that no jurisprudential purpose would be served by an opinion." *See* 2d Cir. Local R. 32.1 cmt; 2d Cir. Local R. 32.1(a).

Petitioners themselves noted in their petition for rehearing *en banc* that the panel's summary affirmance permitted the court to avoid "adopting the district court's opinion as new Circuit precedent." Appellants' Petition for Rehearing and Rehearing en banc (Oct. 29, 2008) at 1. As such, the Second Circuit's summary affirmance does not establish "Second Circuit law" and therefore cannot possibly create an inter-circuit conflict.

That conclusion is buttressed by this Court's decision in *Mandel v. Bradley*, 432 U.S. 173, 176 (1977), which discussed the purpose and scope of a summary affirmance. While "lower courts are bound by summary actions on the merits," "a summary affirmance is an affirmance of the judgment only." *Id.* Consequently, a summary affirmance fails to provide a basis on which to claim a circuit conflict necessitating review by this Court. *See also Fusari v. Steinberg*, 419 U.S. 379, 391-92 (1975) (Burger, C.J., concurring) (a summary affirmance "is not to be read as a renunciation by this Court of doctrines previously announced in our opinions after full argument.").

B. The district court did not even decide the question presented in the petition; it decided a much narrower issue that turns on Ecuadorian, not U.S. law.

Even if it constituted precedent of the Second Circuit, the decision below would not be worthy of review. Perhaps the most important reason is that the district court did not even attempt or purport to decide the general question presented in the petition, i.e., whether *as a general matter* "a government entity" is "bound by the arbitration provision in the joint operating agreement" when

it "steps into the shoes of a private party in a commercial joint venture and takes substantial and direct benefits under the venture's joint operating agreement. Pet. i. To be sure, petitioners argued in the district court that PetroEcuador is bound to the 1965 JOA both because (1) it "stepped into the shoes" (and thus implicitly "assumed" the obligations) of the previous concessionaires, Gulf and Texaco, and (2) PetroEcuador is allegedly "estopped" from denying obligations under the 1965 JOA—such as the obligation to waive the jurisdiction of Ecuadorian courts and arbitrate disputes in New York—because it allegedly knowingly accepted benefits under the 1965 JOA. Unlike the legal theories at issue in *Hardie,* both of these theories are impossible to analyze without reference to Ecuadorian law on which they turn.

1. With respect to their implicit "assumption" theory, petitioners previously complained that "the district court failed to address assumption" at all, Appellants' Petition for Rehearing and Rehearing en banc (Oct. 29, 2008) at 3, adding that the Court of Appeals' reliance on the district court's decision thereby made no sense. Silence, of course, cannot give rise to a circuit conflict.[7]

Nor could a conflict be divined in any event. To be bound to a contractual arbitration provision under an "assumption" theory, "a nonsignatory [of

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[7] Petitioners now claim that the district court collapsed assumption into estoppel. But as the district court observed, it was the parties themselves that "mesh[ed] categories 2 [assumption] and 5 [estoppel] of the Thomson-CSF analysis." Pet. App. 14a. The district court cannot be blamed for considering petitioners' argument as petitioners presented it.

the contract] must 'manifest[] a clear intent to arbitrate the dispute.'" *Gvozdenovic v. United Air Lines, Inc.*, 933 F.2d 1100, 1105 (2d Cir. 1991); *see also Trippe Mfg. Co. v. Niles Audio Corp.*, 401 F.3d 529, 532 (3d Cir. 2005). Here, PetroEcuador neither "expressly assumed" nor manifested a "clear intent" to be bound by any provision of the 1965 JOA. Under Ecuadorian law, PetroEcuador could manifest its intent to contract only in accordance with legal—and very transparent—public law requirements.[8] Here, the failure to obtain any of the necessary governmental approvals, or even a mere signature, establishes as a matter of Ecuadorian law the absence of any intent to contract. Neither *Hardie* nor any other appellate decision says anything to the contrary.

Nor is there any basis in contract to find that PetroEcuador agreed to assume the rights and obligations of the 1965 JOA. The parties agree that in the 1974 Agreement, PetroEcuador acquired a 25% interest in the 1973 Concession, not in the ancillary 1965 JOA. A-1912 ¶30 (PetroEcuador possessed an option "to acquire up to a 25% participation interest in the Napo Concession."); *id.* ¶32 (referring to PetroEcuador's "acquisition of a 25% interest in the Napo Concession"); A-1913 ¶35 (same). Petitioners' own expert conceded that "there is no statement anywhere in the 1974 Agreement that [PetroEcuador] will be [bound] to the privately negotiated JOA by and between Gulf and Texaco," and that there is no "reference to arbitration" at all in the document. A-5289.

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[8] A-498-503 ¶¶ 41-59; A-5068, 5069-70, A-5076; A-5080); *see also* Pet. App. 24a.

Although PetroEcuador later increased its interest in the 1973 Concession by purchasing "Gulf's remaining 37.5% share," nothing in the 1977 Purchase Agreement provides for PetroEcuador's assumption of obligations under the 1965 JOA. A-1917 ¶59. To the contrary, the *only* obligations PetroEcuador assumed were those "that are in accordance with th[is] agreement." A-1317 §2.13. As with the 1974 Agreement, the 1977 Agreement *did not even mention the 1965 JOA.*

Finally, respondents demonstrated in their summary judgment papers, and again at the Rule 44.1 Hearing, that PetroEcuador could not have lawfully become a party to the 1965 JOA because, among other things, under the Ecuadorian Constitution a State entity could not contract within Ecuador to resolve a dispute in an extraterritorial forum; the local courts had exclusive jurisdiction to resolve hydrocarbon contract disputes; no money had been appropriated to support the contract; the parties did not register the 1965 JOA in the Hydrocarbons Registry; the parties did not obtain the required approvals; and the contract was not signed by anyone on behalf of PetroEcuador.[9]

Petitioners suggest that none of this matters under the theory of "assumption" because, unlike estoppel, petitioners do not need to prove reliance. But petitioners ignore that their own expert testified that Texaco could not have made an end-run around Ecuador's extensive administrative and

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[9] A-496-99 ¶¶33-45, A-5067, A-5069-70, A-5076-77, A-5080; A-508-09 ¶¶83-89; A-4788-90 ¶¶17-20, A-5068, A-5080-81, A-5085-90, A-5093-94, A-5095-98, A-5101-02; A-490-91 ¶¶10-12, A-494-95 ¶¶25-26, A-500-05 ¶¶49-59, A-5068; A-503 ¶58, A-507 ¶78, A-5100; A-495-96 ¶¶27-32; A-5439-40.

public contract system of checks and balances so as to have bound PetroEcuador—through allegations of "implicit assumption" or otherwise—to any portion of the 1965 JOA. To the contrary, all pre-contracting requisites still had to be satisfied. A-5287-88; *see also* A-498 ¶ 40; A-5111. Given petitioners' expert's admission, it was eminently reasonable for the district court to reject summarily petitioners' "assumption" argument and focus instead on their "estoppel" argument.

Fundamentally, submission of a governmental entity to the 1965 JOA without the necessary public law approvals and in violation of the Ecuadorian Constitution would have created only an *illegal agreement*, void *ab initio*. Petitioners cite no case in which a court has ever enforced against a sovereign, either through the doctrine of implicit assumption or estoppel, what would otherwise be an *illegal* agreement. Enforcement of such an illegal contract against a nonsignatory, nonconsenting foreign sovereign in contravention of that nation's laws would be unprecedented. There is no inter-circuit conflict.

2. With respect to petitioners' theory of estoppel by acceptance of benefits, they have never denied their burden of establishing (a) "reasonable reliance" (b) on an *actual belief* that PetroEcuador was bound by the 1965 JOA. Indeed, they expressly acknowledged that burden in the proceedings below. Appellants' Brief (February 6, 2008) at 63-64.

As a matter of both United States and Ecuadorian law, Texaco's local Ecuadorian management and attorneys are presumed to have known Ecuadorian law, and consequently to have known that PetroEcuador could never have en-

tered into the 1965 JOA. *See, e.g.,* A-4794-95 ¶¶44-47; A-5275. As the district court found, the Ecuadorian Constitution prohibited submission of an organ of the State to a foreign jurisdiction. Pet. App. 25a. In addition to the constitutional bar, the court noted the "extensive formalities for entry into a government contract for the drilling of oil." Pet. App. 19a. None of the required formalities of public contracting law was satisfied. *Id.* Because Texaco is presumed to have known the law of public contracting, it could not have reasonably believed that PetroEcuador had become a party to, or was bound by, the 1965 JOA.

C. The District Court's decision, which addresses the use of estoppel against a foreign sovereign to compel an illegal act, does not conflict with the Federal Circuit's decision in *Hardie*.

When the district court's decision is properly understood, it is clear that it does not conflict with the Federal Circuit's decision in *Hardie*. The cornerstone of that decision is that, when the United States government stepped into the shoes of a private party, it was bound by *United States* "law applicable to contracts between private individuals." *Hardie v. United States*, 367 F.3d 1288, 1290-91 (Fed. Cir. 2004) (quoting *Hardie v. United States*, 19 Fed. Appx. 899 (Fed. Cir. 2001)). Only because the United States was treated as a private party did that court find that it was bound by the joint venture agreement (and the arbitration provision therein) presented in that case.

The underlying case here is materially different for many reasons. First, Ecuador is not the United States, and the domestic laws to which the federal Government is subject are quite different

from the foreign laws to which the Ecuadorian government, when acting wholly within its own country, is subject. Respondents offered substantial evidence at the Rule 44.1 Hearing that, under Ecuadorian law, PetroEcuador did *not* step into the shoes of (and *ipso facto* become) a private entity; it instead purchased a percentage interest in a partnership while maintaining its governmental status. A-5110-11, A5112-13; A-5287-88. Indeed, the notion that a State-owned oil company becomes a private party when it does precisely what it is chartered to do (acquire and participate in oil operations) makes no sense, Pet. App. 23a-24a, and turns on its head traditional judicial deference to the laws and rights of a foreign sovereign.

Second, no matter how otherwise characterized, Ecuador did not step into the shoes of a private entity as a result of criminal proceedings, as was the case in *Hardie*, but instead negotiated the purchase of an equity interest in the 1973 Concession from a willing seller by means of a government edict and a simple purchase agreement. To hold that this case is controlled by *Hardie* would be to hold that a sovereign agency, including an agency of a *foreign* sovereign, loses its governmental status any time it engages in a transaction with a private party.[10]

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[10] Petitioners erroneously rely on *United States v. Winstar*, 518 U.S. 839 (1996), to reach an opposite conclusion. But *Winstar* dealt with government actions that breached existing contracts. This Court simply did not consider any contention by the sovereign that there existed some legal impediment to it entering into the contracts at issue. Here, however, there was no breach of contract because, as discussed herein, the 1965 JOA was void *ab initio* with respect to Ecuador.

Third, petitioners struggle to find a colorable conflict between the Second Circuit and Federal Circuit principles of law regarding enforcement of a contract against a nonsignatory. Petition, p. 11. According to the petitioners, even though the court in *Hardie* was not faced with the question of binding a nonsignatory by estoppel, and therefore did not address estoppel, the *Hardie* decision is somehow in conflict with the Second Circuit's decision here. It is difficult to find a conflict worthy of *certiorari* when the two courts below have been faced with such different legal theories and factual scenarios.

II. The decision below is of far less importance than petitioners claim, both to the parties and to future disputes involving foreign governments and investment.

Petitioners paint a picture of "extraordinary government intervention and investment in private business" as the stage backdrop for their petition. But petitioners leave out of their portrait (a) the existence of alternative, pending claims, and (b) the improbable nature of this set of facts ever occurring again.

Petitioners have publicly stated that they face no imminent threat of having to satisfy any adverse judgment in the *Lago Agrio* action currently being litigated in Ecuador. First, that case has not yet been decided, so any potential liability is only theoretical at this juncture. Second, petitioners have the right to appeal any adverse decision, and have affirmed their intent to do so.[11] Third,

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[11] Randy Woods, *Ecuador is a headache for Chevron*, BUSINESS NEWS AMERICAS,

petitioners have also publicly announced their intention to challenge any final award in international arbitration as a violation of the U.S.-Ecuador Bilateral Investment Treaty.[12] Fourth, petitioners have publicly announced that they would challenge enforcement of any resulting Ecuadorian judgment in the Courts of the United States. Finally, as noted above, petitioners are seeking indemnification for any *Lago Agrio* liability through alternative theories of relief still pending before the district court in this action.

Petitioners are thus relegated to claiming that the parties tacitly agreed to be legally bound for almost 20 years by an unsigned, multi-billion dollar contract. To believe that a large multinational oil company, with sophisticated in-house and in-country counsel, would engage a foreign sovereign in a contractual business relationship covering more than 17 years, without ensuring that the contract on which it was purportedly relying had been signed, or even approved as valid, requires a significant stretch of the imagination. This is hardly the type of recurring fact pattern that warrants this Court's attention.

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http://www.atamericas.com/content_print.jsp?id=464010&idioma=1$sector=&type=QA (last visited April 24, 2008); Clare Bolton, *Rumble in the Jungle*, LATIN LAWYER ONLINE Mar. 28, 2008, https://www.chevron.com/documents/pdf/texacorumble.pdf (last visited May 18, 2009).

[12] *Id.*

III. Even if the question identified in the petition were really presented by this case, and were otherwise worthy of review, this case would be a poor vehicle for addressing it.

In any event, even if the issue presented in the petition were presented by this case and were otherwise worthy of this Court's attention, this case is not a good vehicle to address that question. First, as shown below, with respect to petitioners' estoppel theory, the district court's decision rests on an alternative, fact-bound holding, namely, that petitioners themselves admitted they did not believe the 1965 JOA was binding on PetroEcuador. Second, the district court's decision is interlocutory, and regardless of this Court's decision, leaves petitioners with alternative avenues for relief.

A. The district court's decision rests on an alternative fact-bound holding, unchallenged in the petition, that petitioners themselves did not believe the 1965 JOA was binding on PetroEcuador.

The district court based its decision on many holdings, including: (1) the status of Ecuadorian law at the time barring a sovereign's submission to extraterritorial arbitration, (2) the unlikelihood of an Ecuadorian court finding the 1965 JOA binding, and (3) that petitioners offered no evidence that they *actually* relied on the 1965 JOA.

The last point is especially important because it provides both an alternative ground for the district court's decision on petitioners' estoppel theory, and a powerful policy reason for denying any relief to petitioners. As the court put it,

> [E]ven if the Court held that an Ecuadorian court would find Chevron's interpretation of the laws of Ecuador correct, Chevron has proffered no evidence which shows that it *actually believed* the JOA bound CEPE at relevant times. Indeed, evidence to the contrary has been presented. Chevron's own expert states that this is fatal to any reasonable expectation claim (to the extent it exists) under Ecuadorian law.

App. 18a-19a. That is, even if the relevant law would *permit* petitioners to rely upon an estoppel theory in treating the 1965 JOA as binding on PetroEcuador, they still would not be entitled to relief because they have failed to establish any *actual* reliance on the JOA. This fact alone requires rejection of petitioners' argument on the merits, even if their underlying legal theory were correct.

This is also a powerful reason for denying review. If this Court were to hold for the first time that a foreign sovereign is subject to judicial estoppel or mandatory assumption under circumstances like those here, surely the Court would want to issue the holding in favor of someone who *actually* relied to its detriment upon the alleged legal materials.

As shown on pages 7-12 above, however, petitioners did not in fact rely—reasonably or even unreasonably—on the assumption that PetroEcuador was bound to the 1965 JOA. Texaco's own internal documents note that the consortium was working under a *de facto* arrangement, and that until a new joint operating agreement was signed, all Texaco could use was its own internal rules and procedures. Resp. App. 26 (A-1388); Resp. App. 28 (A-1391); Resp. App. 21 (A-1344). Gulf

similarly advised Texaco in numerous letters from June 1975 through November 1976 that the 1965 JOA had terminated the moment the 1973 Concession had replaced the 1964 Concession. Resp. App. 38 (A-4774) ¶10; Resp. App. 9 (A-1092); A-4777-81. These letters are in accord with PetroEcuador's Audit Reports from 1984 through 1986. Resp. App. 29 (A-1393); Resp. App. 19 (A-1173); Resp. App. 30-31 (A-1406); Resp. App. 32 (A-1409).

Subsequent agreements also make clear that the parties did not actually believe they were operating under the 1965 JOA. The 1977 Gulf Agreement contained no provisions requiring PetroEcuador to assume any obligations that Gulf owed to Texaco *under the 1965 JOA*. In fact, the 1977 Gulf Agreement referred to the 1973 Concession as the sole contractual basis for the relationship between the concessionaires. No mention was made of the 1965 JOA. Similarly, the 1985 Change-of-Operator Agreement did not recite the 1965 JOA as the basis for interim consortium operations, instead referring only to Texaco's historical "standards and procedures." Resp. App. 24 (A-1362) ¶ 3.3.2.

B. The district court's decision is interlocutory and still leaves petitioners with an opportunity for relief.

This case would not be a good vehicle for addressing any issue of interest to the Court for the additional reason that it is interlocutory in nature. As petitioners concede, both parties still have claims pending before the district court. Because petitioners continue to pursue alternative theories of indemnification, there is no reason for

this Court to take up the present fact-bound case to address the nonexistent circuit conflict imagined by petitioners.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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Counsel for Respondents

MAY 26, 2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE REPUBLIC OF ECUADOR et al.,	:	
Plaintiffs,	:	
v.	:	No. 04CV8378LBS
CHEVRONTEXACO CORPORATION et al.,	:	
Defendants.	:	

Washington, D.C.

Thursday, November 16, 2006

Deposition of

RODRIGO PEREZ PALLARES

* * *

[144] **Q Are you aware of anyone at Texaco ever reaching out to CEPE or subsequently Petroecuador in light of Gulf's position to confirm that CEPE, in fact, considered itself bound to the 1965 NAPO agreement?**

THE INTERPRETER: Of the '65?

BY MR. BLOOM:

Q Correct.

A The answer's no.

Q Now, would you agree that CEPE never actually signed the 1965 JOA? Is that correct?

A That CEPE saw?

Q No, never signed.

A It did not sign, did not sign, did not sign.

Q Did you personally ever have any conversations with anyone at CEPE specifically confirming that CEPE would agree to be bound to all of the terms of the 1965 NAPO agreement?

A No.

Q And I again don't want to invade attorney-client privilege, but in a nonprivileged setting did anyone at Texaco ever inform you of discussions that they may have had with CEPE or Petroecuador regarding the applicability of the NAPO agreement?

A No.

MR. KOLIS: Okay.

BY MR. BLOOM:

Q Is there a reason that you know – withdraw that.

Did Texaco ever consider having CEPE execute a writing that specifically confirmed its intent to be bound to all of the provisions of the NAPO agreement?

MR. KOLIS: I apologize, could you read it back?

(The reporter read the record as requested.)

MR. KOLIS: Let me just object. To the extent you can answer the question without revealing the – the contents of the communications you had internally with your client, confidential communications, you may do so.

THE WITNESS: Not that I'm aware of.

MINUTES

In accordance with the Supreme Decree No 09, dated January 2 of the year 1974, published in the Official Registry No 469, dated January 10 of the year 1974 that authorizes Mr. Minister of Energy and Natural Resources to negotiate for the acquisition of the 25% of the rights and assets of the Consortium Texaco-Gulf corresponding to the Agreement of Exploration and Exploitation of Hydrocarbons subscribed on August 6, 1973, and being the interest of the State that this option shall be effective on June 6, 1974, the following essential items of the negotiation were agreed to by the Ministry of Natural and Energy Resources, CEPE and the Companies Texaco Petroleum Company and Ecuadorian Gulf Oil Company, in the following essential items of the negotiation:

1. The participation of CEPE shall become effective at 00:01 hours of the sixth day of the month of June of the year 1974.

2. The terms and conditions of the purchase-sale shall be object of agreements between the parties in a participation agreement that shall be subject to the approval of the National Government.

* * *

8. All the activities to be performed in the Joint Operation shall be ruled by an Operation Agreement to be subscribed by the parties. CEPE shall participate in the Committee of Representatives of the Parties, and in permanent Sub Committees of

Engineering of Oil and of Accounting and Audit, as well as in other Sub Committees that the parties may approve.

* * *

In order to have a proof of what was agreed in the herein Minute, the parties sign this, in the city of Quito, on June 14, 1974.

[There follow four illegible signatures and below they read:] Gustavo Jarrín Ampudia, Ship Captain of E.M., MINISTRY OF ENERGY AND NATURAL RESOURCES – René Vargas Pazzos, Ternel. Eng. Of E.M., General Manager of CEPE – Eng. Bernardo J. Díaz, Manager, ECUADORIAN GULF OIL COMPANY – Michael A. Martínez, Manager, TEXACO PETROLEUM COMPANY

* * *

ATTACHMENT #1

PETROMAZONAS

When CEPE decided in 1974 to acquire 25% of the rights conferred to Texaco and Gulf by the 1973 Exploitation Contract, and of the assets acquired by the two companies for the purposes of the said Contract, both Texaco and Gulf recommended that a new Operating Agreement be negotiated and signed between CEPE TEXACO and GULF. As part of such Agreement the parties were suposed [sic] to designate an Operator. During the discussions CEPE made clear that neither Texaco nor Gulf would be the Operator, at which time the three parties agreed to form a new company to carry out the joint operations on behalf of them. A draft of the By-Laws was prepared and, together with the drafts of the Operating Agreement and the Participation Agreement, discussed with Gulf and CEPE at first, and with CEPE only later on, when Gulf sold their remaining interest in the Consortium to GULF. The latest draft was sent to CEPE in June, 1980. Since then we have not received any comments from CEPE, and neither Texaco nor CEPE have shown any interest in pursuing this project.

App. 7

Quito, July 14, 1977

PERSONAL AND
CONFIDENTIAL

CEPE AUDIT OF CONSORTIUM
REPORT DATED APRIL 6, 1977

Mr. A.S. Aldrich
Texaco Petroleum Co.
Coral Gables, Florida

Dear Sir:

Please find attached an English abstract of a Cepe (Corporación Estatal Petrolera Ecuatoriana) Audit Report of the consortium operating expenses booked during the period June 6, 1974 through December 31, 1976.

Section A attached is an abstract of the Audit Report; Section B is the Consortium's reply to Cepe.

The Audit consisted of 4 paragraphs on comments, adjustments, recommendations, etc.:

Audit Paragraph 2, General Comments

No answer required on our part.

* * *

Unless Cepe considers it necessary to review in further detail the Consortium's reply it is our position that no further action or reply is required and the audit review is closed.

Yours very truly,
M.A. Martinez, Manager

Original signed by
By: /s/ R. D. Hoggatt
R. D. Hoggatt

ATTACHMENT A

CEPE AUDIT REPORT

ENGLISH ABSTRACT

1. Scope of the Audit

This audit was conducted to examine the operating expenses booked during the period June 6, 1974 through December 31, 1976.

The work was performed by a team of 3 persons: 1 supervisor, Lcdo. Fasuto Villota C. and 2 auditors: Martha Granja C. and Susana Chacón V.

* * *

2. General Comments

a. The fact that an operating agreement between the consortium members Texaco, Gulf and CEPE had not been signed, therefore, Texaco which was the acting operator on June 6, 1974 continued in charge of the operations with the tacit agreement of CEPE and Gulf.

* * *

App. 9

Ecuadorian Gulf Oil Company

Quito, September 23, 1975

JCH-157

Mr. Michael A. Martinez
Manager
TEXACO PETROLEUM COMPANY
Quito

Dear Mr. Martinez:

We refer to your letter M-2052 of August 22, 1975.

We have noted again that you presume, erroneously, in our view, that the Napo Joint Operating Agreement, executed October 22, 1965, and the Coca Letter Agreement of August 8, 1970, are presently in force. We consider that these agreements terminated under their own terms as a result of, and effective upon, the execution of the Petroleum Exploration and Exploitation Contract of August 6, 1973 with the Government of Ecuador. As a consequence, the existing operations, including the handling of Cash Calls, are being pursued on a de facto basis until such time as the new operating agreement is finalized.

Please understand that any payments we make to you in response to Cash Calls, or otherwise, do not constitute our acceptance that the cited agreements

have been in force on any day subsequent to August 14, 1973.

Truly yours,

/s/ G. W. Hall
G. W. HALL

BM/cg

[LOGO]

(Received Apr. 29, 1976)

QUITO ECDR 04-27-76 GLU

TEXLAT CORAL GABLES RCS
RELAY COPY TO PE (EXP/PROD. – GULF) – Done – [/s/ LS]

EJT-106 (TAO B/MAM)

QQ

WE GREATLY CONCERNED AT LACK OF PROGRESS IN PRODUCING AGREED T/G DRAFT OF PARTICIPATION AGREEMENT. WE SUGGEST MAXIMUM PRIORITY THIS PROJECT FOR FOLLOWING REASONS:

1. THE ACTA OF 14 JUNE 1974 COMMITTED US TO A GENERAL COURSE OF ACTION TO BE FOLLOWED (PARAGRAPH 2) BY A PARTICIPATION AGREEMENT SPECIFYING THE PARTICULAR TERMS AND CONDITIONS OF THE SALE, AND THEREAFTER AN OPERATING AGREEMENT REGULATING JOINT OPERATIONS ACTIVITIES. IN THE ABSENCE OF THESE AGREEMENTS WE HAVE BEEN OPERATING ON AN AD HOC BASIS WHEREBY CEPE IS FREE TO PLACE WHATEVER INTERPRETATION IT LIKES ON THE ACTA AND EVERY PROBLEM ARISING THEREFROM BECOMES A MATTER FOR INTERMINABLE NEGOTIATION ON A PURELY INTERIM BASIS. (CURRENT PROBLEMS CONCERNING CRUDE NOMINATIONS, CASH CALLS, AND PERSONNEL ALL ARISE FROM THE LACK OF A FORMAL OPERATING STRUCTURE).

2. NOT WITHSTANDING PENDING AUDIT DETERMINATION OF REMAINING CEPE PAYMENT, IT IS UNLIKELY THAT CEPE WILL CONTRIBUTE THIS AMOUNT UNTIL PARTICIPATION AGREEMENT IS SIGNED.

YOUR ASSISTANCE IN EXPEDITING FINALIZATION OF PARTICIPATION AGREEMENT SO THAT WE CAN PRESENT TO CEPE WILL BE APPRECIATED. OK

O'BRIEN/MARTINEZ

NNN

[illegible]

Quito, June 10, 1974

M-1440/74

E. M. Lt. Col.
René Vargas P.
Manager, C.E.P.E.
His Office.

Dear Manager:

The 25% applicable to CEPE for the cash disbursement corresponding to June, 1974 was reported in our letter M-1314/74 of May 28, 1974.

For your information and consideration, the procedure applied by Texaco Petroleum Company and Ecuadorian Gulf Oil Company beginning in September 1972, to advance funds for the following month's estimated cash deposits, is as follows:

* * *

6. The adjustments required to offset the (over or under) estimates for funds advanced for a given month are made in the following month.

A penalty for default more than 30 days after the date on which the funds should have been furnished applies as between the parties (Texaco and Gulf).

* * *

For your information and review, enclosed please find a copy of the Funding Request for May, 1974, submitted to Ecuadorian Gulf Oil Company by Texaco Petroleum Company on April 18, 1974.

Sincerely yours,

[stamp:] ORIGINAL SIGNED
BY: M. A. Martinez

M. A. Martinez
Manager

[initials]
[illegible]: ylm.

Dec 17 3 03AH'75

2714 GULPE ED
60 GULF OIL CO-LATIN AMERICA CORAL GABLES FLA 12-17-75

GULFPRO
QUITO
LD-584 FOR LAFRANCONI

RE-NAPO ACCOUNTING PROCEDURES YOUR TX-092 LUCAS, O/BRIEN AND UNDERSIGNED AGREE TO FURNISHING COPY OF NAPO ACCOUNTING PROCEDURES TO PEAT MARWICK WITH MENION THAT GULF CONSIDERS NAPO JOINT OPERATING AGREEMENT TERMINATED AUGUST, 1973 AND THAT NAPO ACCOUNTING PROCEDURES ARE USED MERELY FOR QUOTE INTERIM GUIDANCE UNQUOTE REGARDS

WILCOX

2714 GULPE ED

PACK
CORRECTION THIRD LINE OF TEXT SHOULD READ

TOHPEAT MARWICK WITH MENTION REPEAT MENTION

2714 GULPE ED
GULF OIL CGBL

[TRANSLATION]

[At the foot the page is numbered:] 156

[A stamp appears at the right hand of the page] 024207

MEMORANDUM No. 979 A5-SCE-88

To: Mr. President and the Members of the Board of Directors

From: GENERAL MANAGER

Re: CEPE's Strategic Operating Plan in the CEPE-TEXACO Consortium

---

As from the creation of CEPE [the issue] related to its optimum development and self-determination as a State-owned company, responsible for the most important resource-generation activity in Ecuador, has been a permanent goal.

Accordingly only strategic planning will allow establishing the direction that CEPE must follow by means of the definition of its objectives and policies. CEPE's influence in the operations of the Consortium has not been fully in line with the existing oil policy definitions, in spite of the fact that the CEPE owns 62.50% of the rights and shares of the Consortium, on the contrary TEXACO being its actual operator holding a 37.50% interest. It should be noted that in the Trans-Ecuadorian Oil Pipeline CEPE and TEXACO are co-owners holding a 50% stake each.

It is considered that such circumstance results from the lack of an adequate legal instrument governing the relations of the co-owners and regulating the procedures of such operation, since the "NAPO AGREEMENT" and the Minutes of June 14, 1974, fixing CEPE's first interest percentage, are only referential documents for the solution of controversies that may arise.

* * *

In light of the above considerations I have decided by means of Memorandum No. [blurred] 801-CEPE-12-2011 of October 28, 1982, to up of an internal work group to design the strategy that must be adopted by CEPE within the next ten years, as majority shareholder of the CONSORTIUM, starting from a basic parameter: CEPE should be as from January 1, 1985 the actual Operator of the operations.

The referred work group has prepared the document "CEPE's Strategic Operating Plan in the CEPE-TEXACO Consortium" attached hereto, laying down the general objectives and policies that will be the basis to plan the actions to be taken for the performance thereof.

Therefore, I hereby request Mr. President and the Members of the Board to approve this document and specifically to adopt decisions on the following issues:

1. Inform in writing to Texaco Petroleum Company of CEPE's interest in undertaking the operations of the Consortium as from January 1, 1985.

2. Draft and negotiate the "Operating Agreement" with TEXACO PETROLEUM COMPANY. The purpose of such agreement will be to allow the parties to exercise their rights and obligations contained in the Exploration and Production Agreement of August 6, 1973, in an orderly and economic manner, and thus, vesting CEPE with the managerial capacity and power of decision at all levels as majority shareholder, and to provide the relevant legal support for the implementation of all the actions and resources that may lead CEPE to the performance of its purposes.

* * *

Yours sincerely,

GOD, COUNTRY AND FREEDOM

[signed]
Raul Jaramillo del Castillo
General Manager

[Illegible stamps follow]

HV/illegible

INTRODUCTORY INFORMATION

1. REASON OF THE EXAM

The Internal Audit Unit of CEPE in compliance with the Annual Plan of activities for 1986 provided for the performance of a special exam on the costs, expenses and investments made by Texaco operator of Consortium CEPE-TEXACO, in operation of Transecuadorian Pipeline in the period 1985, through the working order No. 007-AIN-86 of March 24, 1986.

* * *

CONCLUSIONS

Pursuant to what was stated, there is no legal basis to contractually relate CEPE and TEXACO in respect to the joint operations in the Consortium CEPE-TEXACO. This item was already revealed by the Internal Audit of CEPE in the report of the Special Exam corresponding to the period of 1984, since it is appreciated the difficulty to comply with one of the objectives of the Agreement, of creating the best conditions within which CEPE can undertake the operations of the Consortium at satisfactory levels.

RECOMMENDATIONS

1. To Mr. President of the Board of Directors, we herein recommend you as Minister of Energy and Mines, to prepare the analysis and to decide over the contractual relations that are necessary to be established between CEPE and TEXACO that will allow to rule over the activities, duties and rights in the joint

operations with the Consortium CEPE-TEXACO, as well as the definitions properly specified, when the contractual relation finishes.

* * *

[hw:] CEPE – Joint Operating Agreement

Quito,
December 30, 1976

MP-251/76-106.1

E.M. Col. Héctor Miranda
General Manager
CORPORACIÓN ESTATAL PETROLERA
ECUATORIANA (CEPE)
Addressed to his Office

Dear General Manager,

In view of the announced transfer of GULF's rights and shares listed in the Contract of August 6, 1975 in favor of CEPE, we believe that it is in the fundamental interest of the two remaining members of the Consortium, i.e. CEPE and TEXACO, to maintain the most efficient levels of production and to continue the operations, until such time when other agreements can be reached. To that end, we propose the following:

1. Until an agreement on new operating procedures can be reached, TEXACO PETROLEUM COMPANY shall continue to apply its own internal rules concerning the management, administration, and approval of outlays in all phases of the joint operations. TEXACO PETROLEUM COMPANY shall continue to keep CEPE informed, as it has been doing, and it shall obtain CEPE's consent for all actions and outlays of major importance.

* * *

Yours sincerely,

ORIGINAL SIGNED BY: M.A. Martínez
M.A. Martínez

JMQ/mcd

AGREEMENT BY THE ECUADORIAN STATE PETROLEUM CORPORATION (CEPE) AND TEXACO PETROLEUM COMPANY CONCERNING THE CEPE-TEXACO CONSORTIUM OPERATIONS:

1. BACKGROUND:

* * *

1.11 CEPE's Board of Directors, at its meeting held on December 27, 1984, resolved;

"1. To reaffirm CEPE's right as majority partner in the CEPE-Texaco Consortium to take over the operations at the most timely moment, that is, when legal and other administrative and operating conditions can permit CEPE's efficient operation of the Consortium. One year written notice of this decision shall be given to the Consortium Operator.

2. To authorize CEPE's General Manager to negotiate and execute an agreement with Texaco Petroleum Company's Manager containing basically the foregoing.

3. To authorize CEPE's General Manager to proceed to negotiate a joint operations agreement with the Consortium within 30 days following the effective date of the aforementioned agreement.

4. To maintain the Consortium's current operating system until the aforementioned agreement is signed."

2. OBJECTIVES OF THE AGREEMENT

With the above background, the parties have agreed to the following:

2.1 The parties hereby reaffirm CEPE's right as majority partner to take over the Consortium's operations, and declare that in order that CEPE may exercise this right at a timely moment and with optimal conditions guaranteeing that the country's most important activity for national-development, that is, petroleum exploitation, shall be carried out within a framework of strict efficiency, regularity and stability, it is necessary to take the appropriate steps for such conditions to occur,

* * *

3. CONCLUSIONS

* * *

3.3 In the meantime, and in order to prepare the Corporation and its personnel gradually by providing the necessary technical and operating capabilities to take over such important and complex operations, the parties specifically agree to the following:

3.3.1 The parties shall within 30 days commence negotiations for a final Joint Operations Agreement to continue the Consortium's operations.

3.3.2 Until the Joint Operations Agreement becomes effective, the Consortium's operations shall be carried out according to the standards and procedures that have been in force up to now.

* * *

In witness whereof, the parties have signed this agreement in Quito on January 22, 1985.

General (r) Sólon A. Espinosa	Donald G. Sawyer
General Manager	Manager
Ecuadorian State Petroleum Corporation	Texaco-Petroleum Company

[TRANSLATION]

Quito,
March 4, 1983

MP-110/83

To:
Rear Admiral Raúl Jaramillo del Castillo
General Manager
CEPE

Dear Sir,

We acknowledge receipt of your kind Official Notice No. 855-DT-SCE-82-013171 dated December 30, 1982, by which you notify TEXACO of CEPE's desire to assume the duties of Operator of the CEPE-TEXACO Consortium as of January 1, 1985.

The said notice, issued under Section 6 of the Joint Operations Agreement signed between TEXACO and GULF in October 1965, and never formally adopted by CEPE, is of great significance towards the efficient and continuous progress of the operation. Therefore, we deem it highly important that the subject matter of the notice be discussed by both parties in order to guarantee that any agreement relative to the operation of the activities of the Consortium be as convenient as possible to the interests of the co-owners and of the Federal Government.

In light of the above, we request that you indicate the time and place for representatives from both companies to initiate talks on this matter of significance.

Sincerely,

[Signature]
W.C. Benton
Manager

PRIVATE

MEETING WITH THE MINISTER OF NATURAL RESOURCES, GEN. E. SEMBLANTES
TUESDAY, AUGUST 22, 1978 (12:30-12:50 PM)

The following main points were discussed with the Minister:

1. OPCA: The Minister was advised of the status of the OPCA negotiation and that all pertinent documents were in CEPE's hands. He was also told that we are now working under a de-facto OPCA arrangement.

/s/ [Illegible]
R. Bucaram

RB:snd
cc: Mr. R.M. Bischoff

* * *

Quito, December 9, 1996

TEXACO'S COMMENTS TO THE OFFICIAL LETTER No. 1092-AIN-86-13183 DATED NOVEMBER 26, 1986 [ITEM 3]

1. In the first paragraph, CEPE's General Auditor refers to a breach of Art. B, item 8 of the Napo Joint Operating Agreement. As set forth in the report of the special examination of operating expenses and investment of the CEPE-TEXACO Consortium for the year 1984, on page 1, recommendation No. 1, there is no Joint Operating Agreement between CEPE and TEXACO that has been declared to be valid and effective by the parties; we do not agree with the comments made by CEPE's Auditors. Therefore, no reference to the Napo Joint Operating Agreement would be applicable since, according to CEPE, it is not in effect.

In addition to the foregoing, we must point out that the regulations concerning the cash calls have been clearly set forth and communicated to CEPE in letter M-1440/40 dated June 10, 1974, a copy of which is hereunto annexed, which is self explanatory.

* * *

Introductory Information

1. Reason of the study

The special study to Expenses of Operation and Investment in Production of the CEPE-TEXACO Consortium corresponding to the year 1986 was performed in compliance with the Annual Plan of Activities for 1987 of the Internal Audit Unit of CEPE, with the issuance of the Work Order No. 002-AIN-87 of January 22nd 1987.

* * *

1.2 By memorandum No. 801-SCE-82-20138 of October 28th 1982, the General Manager of CEPE appointed a commission for the design of the strategy to be adopted by CEPE during the next 10 years, as majority shareholder of the CEPE-TEXACO Consortium, being elaborated the "Strategic-Operative Plan of CEPE in the CEPE-TEXACO Consortium".

In this document the following considerations are expressed:

"It must be established that practically from the beginning of the exploration until the production stage, the real operator of the fields has been the Texaco Company with certain engineering of Gulf in the first years and of CEPE in the last years.

Documents, such as the "Napo Agreement" and the Minutes of June 14th 1974 stating the percentage of CEPE's sharing, have remained up to date as referential instruments for the solution of the difference that may

arise out, although the first has no legal argument to be binding upon the Corporation, except as otherwise provided.

In fact, CEPE did not have an engineering of greater importance in the operation of the Consortium, which did not correspond exactly with the definitions of the existing oil policies; this occurs mainly due to the absence of a legal document governing the relation between co-owners and for the adoption of procedures to regulate such operation.

* * *

The Commission concluded as follows: there is no Agreement of Operation of CEPE and Texaco, and the implementation thereof; CEPE suggested training the personnel on technical, operative and administrative issues to assume directly the whole operation of the consortium, but during 1980 withdrew personnel leaving only the 4.7% of the total; the procedure of approval of co-owner to the management in charge of the operator did not allow CEPE to apply its policies within the Consortium due to the absence of implementation of the Agreement of Joint Operations, and the incorporation and operation of the corresponding Committees and Sub-Committees.

Therefore, the Commission recommended the elaboration of an Agreement of Joint Operations regulating the totality of the activities to be developed in the joint operation, that CEPE assume the responsibility for the administration and operation of the Consortium

gradually, and to progressively replace the foreign personnel by national personnel.

* * *

3.1 Preparation, submitting and approval

TEXACO Petroleum Company, Operator of the CEPE-TEXACO consortium, has not submitted, as of September 1st of each year, the Work Program and its budgets to the members of CEPE and TEXACO, according to Art. 82 of the Napo Agreement of Joint Operations which states the referential terms for the joint operation between CEPE and TEXACO.

* * *

REPUBLIC OF ECUADOR
MINISTRY OF ENERGY AND MINES

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF ECUADOR, PETROECUADOR AND TEXACO PETROLEUM COMPANY

This Memorandum of Understanding is made and entered into by the Government of Ecuador, through the Ministry of Energy and Mines, legally represented by the Minister, Eng. Gustavo Galindo Velasco, hereinafter the "Ministry," and the state company Petróleos de Ecuador, PETROECUADOR, legally represented by its Executive President, Dr. Federico Vintimilla Salcedo, hereinafter "PETROECUADOR," as party of the first part; and by Texaco Petroleum Company, a Delaware corporation with offices at Av. 6 de Diciembre 2816 and J. Orton, Quito, legally represented by its Legal Representative in Ecuador, Mr. Rodrigo Pérez Pallares, and by Dr. Ricardo Reis Veiga, in his capacity of Vice President thereof, hereinafter "Texpet," as party of the second part.

I. OBJECTIVES

The objectives of this Memorandum of Understanding are the following:

a) To set out the scope of the environmental remedial work to be conducted in the area of the former PETROECUADOR-TEXACO Consortium, concerning the biotic, abiotic, and socioeconomic aspects, which scope shall constitute the basis on which Texpet shall issue the corresponding request for bids;

* * *

VIII. The provisions of this Memorandum of Understanding shall apply without prejudice to the rights possibly held by third parties for the impact caused as a consequence of the operations of the former PETROECUADOR-TEXACO Consortium.

In witness whereof the Parties accept the provisions set forth above, and sign this Memorandum of Understanding in Quito, on Dec. 14, 1994.

Eng. Gustavo Galindo Velasco
MINISTER OF ENERGY AND MINES

Dr. Federico Vintimilla Salcedo
EXECUTIVE PRESIDENT OF PETROECUADOR

Dr. Rodrigo Pérez Pallares
LEGAL REPRESENTATIVE OF TEXACO PETROLEUM COMPANY

Dr. Ricardo Reis Veiga
VICE PRESIDENT OF TEXACO PETROLEUM COMPANY

DIR. LEG. CONS. DR. MPE
JSM/
CFS/NCG
December 14, 94

App. 35

TEXACO PETROLEUM COMPANY

PROPRIETARY OFFICE

AVDA: AMAZONA 662 50 Piso
TELEFONO: 544-738
APARTADO POSTAL: 6 A
TELEX: 2725
QUITO: Ecuador, S. A.

July 11, 1979

INTERNAL AUDITS – CONSORTIUM

PRIVATE

MEMORANDUM

Mr. W. C. Benton
Office

In accordance with your request, I have reviewed the letter dated July 6, 1979 from Consortium Management, together with its attachments which consist principally of a new internal audit program covering investment, costs and internal controls.

My observations on the matter are as follows:

* * *

3) *New Audit Program – potential disadvantages to Texaco.*

   i) Tone of new audit program implies a review of Consortium operations, as managed by de facto operator Texaco, from the standpoint of protecting interests of CEPE and the Ecuadorian Government and their respective officials. This is quite different from independent reviews of operational areas

scheduled in original internal audit plan for 1979. It may be assumed that most audit findings under the new program would tend to favor CEPE's interests at the expense of Texaco.

* * *

I believe we should:

i) Protest this major deviation from the original 1979 audit schedule, and ask when originally planned audits will take place.

ii) Deal promptly and firmly with every audit finding as it arises, strongly defending Texaco's interest at all times.

/s/ [Illegible]
A. C. Bedford

ACB:mmc

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE REPUBLIC OF ECUADOR and PETROECUADOR,	:	04 Civ. 8378 (LBS)
	:	ECF CASE
Plaintiffs, Counterclaim Defendants,	:	
-against-	:	
CHEVRONTEXACO CORPORATION and TEXACO PETROLEUM COMPANY,	:	
Defendants, Counterclaim Plaintiffs.	:	

DECLARATION OF JUAN CHACIN GUZMAN

I, Juan Chacin Guzman, under penalty of perjury, do hereby declare pursuant to the laws of the United States of America, including 28 U.S.C. § 1746, that the following is true and correct:

* * *

III. CONSORTIUM OPERATIONS UNDER THE 1973 CONCESSION

9. From the moment the original Concession (the 1964 Concession) had terminated with the signing of the Petroleum Exploration and Exploitation Contract of August 6, 1973 with the Government of Ecuador and the 1973 Concession had become effective, Gulf believed that all agreements based upon and ancillary to the 1964 Concession had likewise

been terminated. This was not only my opinion, but also that held by senior Latin American stateside Gulf management in Coral Gables, Florida, as expressed to me. As President of Ecuadorian Gulf Oil beginning in early 1975, I communicated to Texaco Gulf's view that the original Concession and 1965 JOA had terminated upon the signing of the 1973 Concession.

10. Attached as Exhibits 1-5 of this declaration are letters prepared, executed and sent by me to Texaco (Official Letters Nos. JCH-78; JCH-93; JCH-125; JCH-182; JCH-217) dated, respectively, June 20, July 28, August 27, November 25 and October 20, 1975. In each case, in consultation with and having the support, approval and direction of senior stateside Gulf Latin American management, I (on behalf of Gulf) told Texaco that the 1965 JOA had terminated under its own terms "as a result of, and effective upon, the execution of the Petroleum Exploration and Exploitation Contract of August 6, 1973 with the Government of Ecuador." These letters reflected my then belief – which is also my current belief – that the 1965 JOA no longer bound Texaco and Gulf, much less CEPE, once the 1973 agreement had been executed.

11. I sent each letter to make clear to Texaco Gulf's position with respect to cash call procedures – namely, that Gulf's willingness to make the "cash call" payments was not derived from any residual obligation that Gulf had to the Operator under the terminated 1965 JOA, but rather derived from our

mutual desire to continue performing the necessary operational activities in the interim until a new joint operating agreement – this one to include CEPE – could be negotiated.

12. Consistent with the above, to the best of my recollection, CEPE was never asked by Gulf to "join" the 1965 JOA. To the contrary, Gulf had always believed that since 1973 the 1965 JOA was no longer in force, even bilaterally as between Texaco and Gulf, much less between CEPE, Texaco and Gulf, and both companies therefore sought to negotiate a new tripartite operating agreement among CEPE, Texaco and Gulf. Gulf expressed to Texaco its discontent with continuing to operate indefinitely as concessionaires on a *de facto* interim basis in the absence of a legally enforceable joint operating agreement.

13. Attached to this declaration as Exhibits 6 and 7, respectively; is a January 25, 1975 letter to me from Rene Vargas Pazzos, CEPE's General Manger [sic]; and a January 28 1975 letter sent by me to Rene Vargas Pazzos (Official Letter No. 015-75-DP-398 and letter JCH-05).

14. In the first letter, Mr. Vargas Pazzos states that CEPE has prepared a draft of a "Participation Contract for the Exploitation of Petroleum and Free Gas, and Joint Operations Agreement" for the contractual area. He goes on to state that these contracts were needed to govern the current and future relations of the CEPE, Texaco and Gulf Consortium. As Gulf's chief representative and ultimate authority in

Ecuador, I understood that a new joint operations agreement was needed because Gulf viewed the 1965 JOA as of historical interest only. In this letter, CEPE agreed that adopting an enforceable operating agreement would be quite desirable.

* * *

16. Finally, attached as Exhibits 8 and 9 of this declaration, respectively, is an April 1, 1975 letter from M.A. Martinez. General Manager of Texaco, to Rene Vargas Pazzos, CEPE's General Manger [sic]; and a July 16, 1975 telex from Rene Vargas Pazzos of CEPE to M.A. Martinez of Texaco and myself. In these letters as well, all three 1973 Consortium parties agreed on the need to finalize and execute a joint operating agreement among themselves. I am confident that in 1975 Texaco as well understood that the 1965 JOA was no longer an effective contract – not even bilaterally between Gulf and Texaco.

17. These facts and beliefs are based on my personal experience as President of Ecuadorian Gulf Oil Company and my observations of and dealings with the other Consortium members. All the documents referenced above, which I identify as business records of Gulf, correctly express the facts, practices and behavior of the Consortium members during the time that I acted as President of Gulf.

Executed: February 5th, 2007

By: /s/ Juan Chacin

TRANSLATION

(CEPE)

Official Letter No. 015-75-DP-398

Quito, January 25, 1975

Mr. Juan Chacin
General Manager
Ecuadorian Gulf Oil Company
Quito.

(Received Feb. 3, 1975)

Mr. Manager:

This Corporation has prepared the drafts of a PARTICIPATION CONTRACT FOR EXPLOITATION OF PETROLEUM AND FREE GAS and JOINT OPERATORS AGREEMENT – CONTRACT AREA. These documents shall govern the contractual and operational relations of the CEPE-TEXACO-GULF Consortium. I am enclosing copies of these drafts for your consideration.

CEPE is interested that at your earliest possible convenience you analyze the documents in order to enforce them immediately; I would therefore thank you very much if you contact the undersigned in order to establish the modus operandi to be followed.

Very truly yours,
RENE VARGAS PAZZOS
CEPE GENERAL MANAGER